

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:03CR384
)	
v.)	
)	
THEOPHALAS MAYS,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's motion to reduce sentence and request for evidentiary hearing and oral argument (Filing No. 63). Pursuant to the retroactive amendment to the cocaine base guidelines, the defendant's final offense level is reduced from 31 to 29. His criminal history category remains at II.

On November 4, 2003, defendant entered pleas of guilty to Counts I and III of the indictment. On February 18, 2004, defendant was sentenced to one hundred twenty-one (121) months on Count I and sixty (60) months on Count III, said sentences to run consecutively, with five years of supervised release to follow.

On June 8, 2005, pursuant to a Rule 35 motion (Filing No. 50), defendant's sentence was reduced to sixty-seven (67) months on Count I, with no reduction in the sixty (60) month sentence originally imposed on Count III. Defendant was given credit for time served, and the other terms and conditions of the original commitment order remain in full force and effect.

The effect of the modifications to the United States Sentencing Guidelines would reduce the defendant's original sentence to one hundred twenty (120) months on Count I. Giving him an adjustment pursuant to the Rule 35 motion results in a sentence of sixty-six (66) months on Count I and sixty (60) months on Count III, to run consecutively to the sentence for Count I. Accordingly,

IT IS ORDERED:

1) The motion to reduce sentence is granted to the extent that the sentence of the defendant is reduced to sixty-six (66) months on Count I and sixty (60) months on Count III. The sentence on Count III shall run consecutively to the sentence on Count I. Defendant shall receive credit for time served.

2) The conditions of supervised release entered in the original judgment and committal order remain in full force and effect.

3) The remainder of defendant's motion is denied.

DATED this 27th day of January, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court